

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-10-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE M. JAICHANDREN

L.P.A.NO.111 OF 2002
and
CMP.Nos.19633 of 2003, 16536 & 16537 of 2005

Sri Krishnavilas Bajanai Madam,
Thirumalai Nambi Street,
Kumbakonam.

Rep. By its Trustees

1. Balakrishnan
2. Rajam
3. Lakshmanan
4. Govindarajan
5. Ramasamy alias Jayasundaram
6. T.N.B. Narayanan
7. T.N.B. Sridhar

(Appellants 6 & 7 are brought
on record as LR's of the
deceased 1st appellant as per
order dt.14.11.1995 in CMP.
No.6528 to 6532/93) ... Appellant/ Plaintiff

Vs.

1. The Commissioner,
H.R & C.E. Department,
Madras.

2. The Assistant Commissioner,
H.R & C.E. (Admn), Thanjavur.

3. R. Krishnamurthi ... Respondents/ Defendants

Appeal filed under Clause 15 of Letters Patent against the
judgment and decree of the learned single Judge in A.S.No.734 of
1992 dated 20.11.2000.(O.S.No.117/88 on the file of the Court of
the Subordinate Judge, Kumbakonam)

For Appellant : Mr.T.L. Ram Mohan
Senior Advocate for
Mr.T. Susindran

For Respondents 1& 2: Mr.V. Srikanth, AGP

Respondent-3 : Mrs. Mythili Suresh

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J U D G M E N T

P.K. MISRA, J

Plaintiffs are the appellants.

2. Plaintiffs had filed an application under Section 63 (a) of the Hindu Religious and Charitable Endowment Act, 1959 (hereinafter referred to as "the Act") that the plaintiff institution Krishna Vilas Bajanai Madam is not a temple or a mutt or a religious institution or a specific endowment as defined under the Act. Initially the Deputy Commissioner held that it was a religious institution within the meaning of the Act. In appeal, the matter was remanded. At that stage, considering the various materials on record, including the report of the Inspector, the Deputy Commissioner held that the institution does not come within the purview of the Act. However, in appeal the Commissioner held that the institution was a 'religious institution' within the meaning of the Act. Thereafter a statutory suit was instituted.

3. The basic allegations are to the effect that forefathers of the plaintiff who were devotees of Lord Krishna established a private trust for the purpose of doing bajaranis and for doing poojas for some days. Certain properties were in the name of the Trust and other properties were purchased in the name of the private persons and the income was utilized for the purpose of holding poojas. Even though at times the members of the public were permitted, they had no right and, therefore, the institution must be taken to be a private Trust. The contention on behalf of the Department as well as the third defendant was to the effect that such Trust had been created by document dated 20.7.1896 which indicated that the institution was a public charitable institution and subsequently the Trustees had executed another document under Ex.A-11, but the effect of the original trust cannot be taken away in any manner. The trial court held that the plaintiff's trust is not a private trust, but a temple as defined under the Act. In appeal, the learned single Judge did not agree with the findings of the trial court that the institution was a temple. However, the learned single Judge observed that the institution was a public charitable institution coming within the purview of the Act.

In this appeal, it is contended on behalf of the appellant that the conclusion of the learned single Judge to the effect that the institution is a charitable institution coming within the scope of the Act is not sustainable in view of the materials on record. It is further submitted that in the absence of any evidence that public had right to participate in any worship, the conclusion cannot be sustained. In particular, the learned counsel for the appellant has invited our attention to the inspection report of the Deputy Commissioner, where it has been clearly indicated that the place of the institution is accessible only from inside the house. It is also pointed out that there is no evidence that the public had right to participate in the bajanai or in the worship and, therefore, it cannot be considered as a public charitable institution.

4. Learned counsel appearing for the H.R & C.E. Department has supported the conclusion of the courts below.

5. As per Section 6(13) "math" means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the Founder of the institution or is regulated by usage and -

- (i) whose duty is to engage himself in imparting religious instruction or rendering spiritual service; or
- (ii) who exercises or claims to exercise spiritual headship over a body of disciples.

and includes places of religious worship or instruction which are appurtenant to the institution.

As per Section 6(18), "religious institution" means a math, temple or specific endowment and includes, -

- (i) a samadhi or
- (ii) any other institution established or maintained for a religious purpose.

As per Section 6(19) "specific endowment" means any property or money endowed for the performance of any specific service or charity in a math or temple or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation (1) to clause (17).

As per Section 6(20) "temple" means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship.

6. Before considering other materials on record, it is important to refer to the Inspection Report of the Inspector. This report indicates that the premises where bajanaais were held and worship occurs is not at all accessible from outside and one has to

come to such place only through the adjacent residential house belonging to the family of the plaintiff. This report also indicates that there is no worship by public as a matter of right. Moreover, the institution premises is assessed to Municipal tax as a private house. Such report has not been challenged by any person at any stage. From the report, it is prima facie apparent that the place is not accessible to the public as such and it is assessed to municipal tax as a privately owned house. Even the report indicates that there is no indication of any temple as there is no Dwajasthambam, Hundial or vikragams.

7. The courts below have placed strong reliance upon the document Ex.B-1, which is the Trust Deed dated 20.7.1896, executed by the ancestors of the plaintiff. Particular emphasis has been placed by the defendants on certain recitals in such document. Particularly paragraph 9, where it is recited that the original donor had created a public charity and he himself and his legal heirs have no right over the property except the management and he and his legal heirs have no right to alienate the same. However, there is no other material to indicate that the institution has ever been dedicated to the public. On the other hand, the document itself indicates in para 3 that after construction of the building and naming it as Krishna Vilasam, the donor conducted Grahapravesham and the building was established as a Bajanai Koodam and the said building is treated as Bajanai Koodam accompanied with Bagavatha Goshti. In paragraph 2 of the English translated version, it has been recited as follows :-

"2. My father during his life time as well as after his death myself were devotees of Vishnu and joined in Bagavatha Goshti and for the purpose of attaining Sarujya post of those persons who worship and do pooja at Krishna Vilasa Bajanai Koodam which was created by me with the funds available with me through myself earnings and other things and I have directed certain things to be done as follows so as to do the pooja for my Pariloga Paramathma permanently."

8. This document creating a trust is therefore susceptible of being interpreted as a private trust more particularly in view of the fact that the place where bajanai koodam is existing is not at all accessible from outside. Apart from the above features, there is no material whatsoever indicating that public had right to participate in the worship or in the bajanai or offer any worship. These aspects had been highlighted by the Deputy Commissioner in his order. Both the Courts below have placed much reliance upon paragraph 9 of the Trust Deed. However, the Trust Deed read as whole is also consistently of a concept that it is a private trust. As a matter of fact, clause 14 of such trust deed also indicates that during the lifetime the creator was to look after the aforesaid Krishna Vilasa Bajanai Koodam and its building and after his death, the eldest male heir is to manage the trust as a representative. There is also no evidence that at any point of time any member of the public had

participated in the management or even had the right of worshipping or participating as a matter of right in any function.

9. For the aforesaid reasons, we are unable to accept the conclusion of the learned single Judge and the appeal is allowed. The suit is therefore decreed. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

To

1. The Subordinate Judge,
Kumbakonam

2. The Sub Assistant Registrar,
Appellate Side,
High Court, Madras

3. The Record Keeper,
VR Section,
High Court, Madras.

1 cc to the Government Pleader, CS, Sr. 48296

1 cc to Mrs. Mythili Suresh, Advocate, sr, 48451

1 cc to Mr.T. Susindran, Advocate, Sr. 48773

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